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No. 05-1376

IN THE

Supreme Court of the United States

ROBERT H. SARVIS,

Mr. Sarvis,

v.

BARBARA E. HATHAWAY,

Ms. Hathaway.

On Writ of Certiorari to the
Maine Supreme Judicial Court

BRIEF IN OPPOSITION OF

RESPONDENT BARBARA E. HATHAWAY

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondent Barbara E. Hathaway (hereinafter "Ms. Hathaway") respectfully requests that this Court deny the Petitioner Robert H. Sarvis' (hereinafter "Mr. Sarvis") petition for a writ of certiorari (hereinafter the "Petition"), seeking review of the order of the Maine Supreme Judicial Court in the matter of Hathaway v. Sarvis, Mem-06-25 (Me. February 9, 2006) (unpublished) (hereinafter the "Maine Decision").[1] This matter arises from a garden variety divorce judgment which was issued by the Maine District Court (Division of Southern Cumberland) on September 29, 1997. Federal questions were not meaningfully raised nor adequately preserved in the divorce or post-divorce litigation.

In essence, Mr. Sarvis is asking this Court to serve as yet another appeals court to the decision of the Maine Supreme Judicial Court. This Court does not have the authority to serve such a function and the Petition should be denied

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[1] The Petitioner included a copy of the Maine Decision in Appendix A of his Petition. There are two misspellings in Mr. Sarvis' rendition of the Maine Decision. The word "from" is incorrectly transcribed as "form" in the first and fourth sentences. The Maine Decision is not published in the official state reporter for Maine but is available at http://www.cleaves.org/pdf/06-25.pdf.

putting an end to Mr. Sarvis' relentless efforts to prolong this litigation.[2]

STATEMENT OF THE CASE[3]

Mr. Sarvis and Ms. Hathaway were married on January 29, 1995. During the time period from April 4, 1995 through August 17, 1998, Mr. Sarvis was incarcerated in Allenwood (Pennsylvania) Federal Prison.

On or about January 22, 1996, Ms. Hathaway commenced a divorce proceeding pursuant to Maine law in the Maine District Court entitled Barbara Hathaway v. Robert Sarvis, No. 96-DV-35 (Maine District Court, Ninth

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[2] The Petition is part of Mr. Sarvis' vexatious litigation strategy following the parties' 1997 divorce. In raising this point, the undersigned is mindful that Mr. Sarvis is not an inexperienced pro-se litigant, but rather has extensive trial and appellate experience. See United States of America v. Robert Sarvis, 2000 U.S. App. Lexis 30124 (2d Cir. 2000); Sarvis v. United States, 2000 U.S. App. Lexis 26618 (2d Cir. 2000); United States v. Sarvis, 2000 App. Lexis 302 (2d Cir. 2000); United States v. Robert H. Sarvis, 102 F.Supp. 2d 514 (Vt. 2000); Sarvis v. Vermont State Colleges, 772 A.2d 494 (Vt. 2001); Sarvis v. Hathaway, Decision No. Mem 05-9, Docket No. CUM-04-331 (Maine Supreme Judicial Court - January 11, 2005); Hathaway v. Sarvis, Decision No. Mem 06-25, Docket No. CUM-05-341 (Maine Supreme Judicial Court - February 9, 2006).

[3] Ms. Hathaway provides a detailed rendition of the facts underlying the Maine litigation in compliance with this Court's admonishments in Supreme Court Rule 15(2).

District, Division of Southern Cumberland) (hereinafter the "Divorce Action").

Through much of the Divorce Action, Mr. Sarvis appeared *pro se*. The Divorce Action did not involve custody or child support issues as the parties did not have children.

After approximately 20 months of motion practice, discovery, and unconsummated settlement, Mr. Sarvis filed a pleading dated August 27, 1997 which stated in its entirety: "The Defendant, Robert H. Sarvis, herein with_draws (*sic*) his objection to the divorce and no longer contests its finality. He with draws (*sic*) his request for stay and his demand for a hearing. He wishes that the Court issue whatever is necessary to finalize the divorce."

Subsequently, a hearing was held on September 29, 1997 before Judge Joyce A. Wheeler of the Maine District Court. Ms. Hathaway appeared *pro se*. Mr. Sarvis did not appear. A judgment was issued in the Divorce Action on September 29, 1997 (hereinafter the "1997 Divorce Judgment").

The 1997 Divorce Judgment awarded the parties' personal property "to the party in whose possession such property reposed at the date of the hearing". The 1997 Divorce Judgment recited that there was no marital real property, and it set aside as individual debts those liabilities in each party's sole name.

Mr. Sarvis did not appeal the 1997 Divorce Judgment.

On or about August 19, 2003, more than five years after the issuance of the 1997 Divorce Judgment, Mr. Sarvis commenced a multi-count action against Ms. Hathaway in the Cumberland County Superior Court alleging, *inter alia*,

that Ms. Hathaway breached the "settlement agreement" which he and Ms. Hathaway purportedly made during the Divorce Action, breached certain fiduciary duties and converted his property. Robert H. Sarvis v. Barbara E. Hathaway, No. CV-03-456 (Maine Superior Court (Cumberland County) 2003) (hereinafter the "Contract Action"). The Maine District Court granted Ms. Hathaway's motion to dismiss the Contract Action pursuant to Me.R.Civ.P. 12(b)(6) and the dismissal was upheld by the Maine Supreme Judicial Court sitting as the Law Court. Sarvis v. Hathaway, Mem-05-9 (Me. January 11, 2005).[4]

Mr. Sarvis did not pursue any further litigation in the Contract Action but on or about February 22, 2005, more than seven years after the issuance of the 1997 Divorce Judgment, Mr. Sarvis filed several post-judgment motions in the Divorce Action, namely: (1) a Motion for Clarification and Interpretation of Judgment and Enforcement of Settlement Agreement pursuant to Maine Rule of Civil Procedure (hereinafter "Me.R.Civ.P.") 80(k), and (2) a Motion to Vacate pursuant to Me.R.Civ.P. Rule 80(k) and Me.R.Civ.P. 60(b)(3)(4)(6) (hereinafter the "Post-Divorce Motions").

After briefing and oral argument, the Maine District Court issued an order dated June 21, 2005 which denied Mr. Sarvis' Post-Divorce Motions (hereinafter the "Post-Divorce Order"). Among other things, the Post-Divorce Order held that the 1997 Divorce Judgment was not ambiguous, the alleged settlement agreement was never part of the 1997

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[4] This memorandum of decision is not published in the official state reporter for Maine but is available at http://www.cleaves.org/pdf/05-9.pdf.

Divorce Judgment, Mr. Sarvis never denied receiving the 1997 Divorce Judgment, Mr. Sarvis never appealed it and Mr. Sarvis' delay (7 ½ years from date of the judgment) was fatal to much of the relief he sought.

The 2005 Post-Divorce Order was affirmed in the Maine Decision by the Maine Supreme Judicial Court sitting as the Law Court.

Having exhausted state court remedies, Mr. Sarvis filed this Petition seeking the issuance of a writ of certiorari to further challenge the Maine Decision.

REASON FOR DENYING THE PETITION

The petition for a writ of certiorari should be denied because federal questions were not properly raised or adequately framed in the post-divorce litigation.

The scope of the Supreme Court's jurisdiction to review state court decisions is defined by 28 U.S.C. § 1257(a). The relevant portion of that statute provides that final judgments of the highest court of a State may be reviewed by the Supreme Court by writ of certiorari: "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

The Supreme Court "has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly

presented to the state court that rendered the decision . . .." Howell v. Mississippi, 543 U.S. 440, 443 (2005) (quotations omitted); See also Adams v. Robertson, 520 U.S. 83, 86 (1997).

The logic for these jurisdictional limitations is broadly based:

> There are also very practical reasons for insisting that federal issues be presented first in the state-court system. The requirement affords the parties the opportunity to develop the record necessary for adjudicating the issue. It permits the state courts to exercise their authority, which federal courts, including this one, do not have at least to the same extent, to construe state statutes so as to avoid or obviate federal constitutional challenges such as vagueness and overbreadth. The rule also insures that if there are independent and adequate state grounds that would pretermit the federal issue, they will be identified and acted upon in an authoritative manner. Finally, if the parties to state-court litigation are required to present their federal claims in the state tribunals in the first instance, those issues will be adjudicated in the state courts where necessary to dispose of the case. In most instances, such a judgment will be supported by an opinion that may well obviate any reason for our giving plenary consideration to the case. In terms of our own workload, this is a very substantial matter.

Webb v. Webb, 451 U.S. 493, 501 (1981).

Supreme Court Rule 14(g)(i) compliments these requirements by mandating that the petition seeking a writ of certiorari specify (1) when in the state court proceedings the federal questions were first raised; (2) how they were raised; (3) how the state courts addressed them; and (4) "pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears . . . so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari."

In the instant case, the wisdom of these requirements is underscored. Mr. Sarvis did not adequately address or properly present any substantial federal questions in the divorce litigation. This is reflected in the Petition as it fails to comply with the requirements of Rule 14(g)(i). The explanations for these shortcomings are identical and simple: there were no meaningful federal questions raised or preserved in the post divorce litigation. That litigation revolved, as it should, around state law questions concerning the procedures available to challenge a 7 ½ year old judgment.

Mr. Sarvis strives mightily to craft federal questions in his Petition but even read most expansively, only two possible questions are framed:

1. Equal Protection. The Maine courts "ruled unfairly against him" because of Mr. Sarvis' status as an inmate and a *pro se* litigant.

2. Contract Clause. The refusal of the Maine courts to conclude that a valid settlement agreement existed between the parties somehow violated Mr. Sarvis' rights

as protected under Article I, § 10 of the United States Constitution.

These challenges are disposed of easily as neither of these issues were adequately raised or preserved in the Maine litigation.[5]

Mr. Sarvis raised only one constitutional issue (due process) at the trial court level of the post-divorce litigation. He argued that because he was incarcerated during the divorce proceeding, he was at a distinct and unfair advantage to negotiate a property settlement, that his incarceration prevented him from attending the hearing, and his indingency prevented him from having an attorney.

Counsel for Ms. Hathaway cannot find any reference to an equal protection argument or an impairment of contract argument made by Mr. Sarvis at the trial court level of the post-divorce litigation.

In deciding the Post-Divorce Motions, the Maine District Court did not address any constitutional issues (state or federal).[6] Rather it dispensed with Petitioner's challenges under state law.

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[5] Furthermore, as the state court record fully reflects, there is simply no substantive basis for any of the constitutional claims raised by the Petitioner.

[6] In response to Mr. Sarvis' argument that the 1997 Divorce Judgment should be vacated because he could not defend the action and did not have appropriate representation or a fair hearing, the District Court held that:

> It is clear from the filings that Defendant [Mr. Sarvis] has been involved in court proceedings on numerous occasions representing himself. Defendant filed an answer, motion to

On appeal of the Post-Divorce Order, Mr. Sarvis fleetingly attempted to raise two constitutional issues. Of the many arguments addressed in his twenty-seven page post-divorce appeal brief, only one sentence concerns Article 1, §10 of the United States Constitution and ten sentences discuss due process provided under the United States and Maine's Constitutions.

There is no mention of an equal protection argument.

The Maine Decision mentions only one possible constitutional argument and dismisses it in one sentence: "Moreover, Sarvis was not denied due process." Hathaway v. Sarvis, Mem-06-25 at 2. There is no discussion of either of the federal questions the Petition purports to frame (equal

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> stay, motion for added time, motion for clarification, motion to reconsider, motion for legal fees, discovery, objections to motions, and various correspondence. He had the opportunity, as did anyone else, to obtain representation by an attorney. In fact, he did so, and had an attorney throughout part of the divorce process. Attorney Romanow was his lawyer from October 1996 to January 1997. He did not have an attorney at the end of this process, and at the time of the hearing, though that was apparently his choice. His wife's attorney had also withdrawn. The hearing took place in the normal fashion after the Defendant had consented to its proceeding. He made no request to participate in person, as he was in federal prison at the time. There was nothing unfair and inequitable about the court's decision to proceed under those circumstances, and the Court issued a very typical, simple divorce judgment at the time of the hearing."
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> Post-Divorce Order, page 4. Mr. Sarvis included an excerpted portion of the Maine Decision in his Petition but excluded this section.

protection or contract impairment).[7] As a result, these issues were never properly presented or adequately framed and are not questions for which certiorari should be granted. "When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented . . ." Adams, 520 U.S. at 86-87 (citations omitted).

The silence by the Maine Supreme Judicial Court on these federal issues flows from the fact noted above that the divorce litigation was overwhelmingly focused on state law concerns, not federal constitutional issues. The heart of Mr. Sarvis' lament on appeal was that he disagreed with the Maine District Court's implicit conclusions that there was no valid settlement agreement between the parties, that his consent to the divorce was binding, and that his failure to appeal the 1997 Divorce Judgment in a timely manner bars him from re-litigating old issues. None of Mr. Sarvis' arguments come close to phrasing a federal question.

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[7] Putting aside the fact that the Petition attempts to frame equal protection and contract clause, not due process, challenges, the Maine Supreme Judicial Court dispensed with Mr. Sarvis' due process argument citing to Fichter v. Board of Environmental Protection, 604 A.2d 434, 436-37 (Me. 1992). The Maine Decision does not reveal whether it reached both the state and federal due process concerns. Even if Mr. Sarvis had adequately raised and persevered the due process challenge in state court and had pursued that challenge in his Petition (both of which Ms. Hathaway asserts he failed to do), this Court would be faced with the ambiguity of whether the Maine Decision was based on federal or state grounds, and it would be within the discretion of this Court not to determine the federal question, but rather to remand to the State court for clarification as to the ground of the decision. Orr v. Orr, 440 U.S. 268, 276 (1979).

Indeed, this is evident by the fact that the Maine Decision concentrated its analysis on state issues. The divorce record is replete with Maine law, not federal questions. As such, the record is inadequate for consideration by this Court as to any federal issues.

This Court has not hesitated to grant certiorari when the federal question was clearly and unequivocally presented in the state court.

> At the minimum, however, there should be no doubt from the record that a claim under a federal statute or the Federal Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law. Otherwise, we cannot be sufficiently sure, when the state court whose judgment is being reviewed has not addressed the federal question that is later presented here, that the issue was actually presented and silently resolved by the state court against Mr. Sarvis or the appellant in this Court.

Webb, 451 U.S. at 501.

No such clarity exists here as Mr. Sarvis neither adequately preserved nor properly raised federal issues.

CONCLUSION

Case law and this Court's own rules clearly establish that "a petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Here, no such reasons exist. In fact, there are no reasons whatsoever for filing the writ. Mr. Sarvis failed to raise or adequately preserve a federal question.

Ms. Hathaway urges this Court to deny the Petition and to end litigation over a 1997 judgment. The result of this litigation is to, once again, further increase the costs and expenses incurred by Ms. Hathaway in connection with a 1997 Divorce Judgment. Mr. Sarvis' conclusory and belated attempts to assert that substantial federal questions exist which need to be addressed by this Court, should be promptly thwarted by the denial of the Petition.

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

May 31, 2006

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